

March 7, 1974

CONGRESSIONAL RECORD — SENATE

S 5941

a good procedure to clear up the misunderstanding on part A of title II. There is broad support for all of the rest of the bill. I wish that it were possible to retain that and to pass it on over to the House of Representatives; nevertheless, I think that we can do this very adequately and still come back in 10 days.

Ask the chairman of the Committee on Interior and Insular Affairs, if I may get his attention, am I correct in understanding that it automatically returns to the Senate floor in 10 days?

Mr. JACKSON. The Senator is correct. I will make the motion, or make a unanimous-consent request either way to that effect.

In order to handle the matter properly, I am advised that we should have the specific date. If we exclude the recess dates, the time it is to be reported back would be Monday, March 25. I will make the request that way, and then there will be no dispute that it automatically comes back.

Mr. President, I ask unanimous consent that S. 1017 be rereferred at this time to the Committee on Interior and Insular Affairs, with instructions to report the bill back, as amended or otherwise, on March 25, 1974.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 702, S. 265, and Calendar Order No. 701, S. 1688, in that order.

The PRESIDING OFFICER. Without objection, it is so ordered.

SALE OF MINERAL RIGHTS IN CERTAIN LANDS IN UTAH

The Senate proceeded to consider the bill (S. 265) to authorize the Secretary of the Interior to sell certain mineral rights in certain lands located in Utah to the record owner thereof which had been reported from the Committee on Interior and Insular Affairs with an amendment on page 3, line 6, after the word "interest", insert "to"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed to convey, sell, and quitclaim all mineral interests now owned by the United States to the record owner of the surface and a one-half undivided interest in the minerals, in and to the following described land in Utah County, Utah:

Beginning at a point south 151.8 feet and west 0.27 feet from the north quarter corner of section 17, township 5 south, range 2 east, Salt Lake base and meridian, and running thence south 89 degrees, 54 minutes east 62.0 feet; thence north 0 degrees 06 minutes east 152.1 feet; thence north 89 degrees 29 minutes 44 seconds east 70 feet; thence south 0 degrees 06 minutes west 165.62 feet; thence south 89 degrees 54 minutes east 164.97 feet; thence north 0 degrees 06 minutes east 137 feet; thence north 89 degrees 51 minutes east 16.6 feet; thence south 0 degrees 06 minutes west 137 feet; thence south 39 degrees 29 minutes west 235 feet; thence south 51 degrees 17 minutes west 235 feet; thence north 89 degrees 40 minutes west 268.8 feet; thence south 0 degrees 28 minutes 30 seconds west 1,262.9 feet along a fence line; thence north 89 degrees 46 minutes west 364.2 feet; thence south 89 degrees 06 minutes 30 seconds west 133.2 feet; thence north 1 degree 17 minutes 30 seconds east 1,323.2 feet thence east 4.34 feet; thence north 0 degrees 06 minutes east 456.7 feet, more or less to the point of beginning.

Sec. 2. The Secretary shall require the deposit of a sum of money which he deems sufficient to cover estimated administrative costs of this Act. If a conveyance is not made pursuant to this Act, and the administrative costs exceed the deposit, the Secretary shall bill the applicant for the outstanding amount, but if the amount of the deposit exceeds the actual administrative costs, the Secretary shall refund the excess.

Sec. 3. No conveyance shall be made unless application for conveyance is filed with the Secretary within six months of the date of approval of this Act and unless within the time specified by him payment is made to the Secretary of (1) administrative costs of the conveyance and (2) the fair market value of the interest to be conveyed. The amount of the payment required shall be the difference between the amount deposited and the full amount required to be paid under this section. If the amount deposited exceeds the full amount required to be paid, the applicant shall be given a credit or refund for the excess.

Sec. 4. The term "administrative costs" as used in this Act includes, but is not limited to, all costs of (1) conducting an exploratory program to determine the character of the mineral deposits in the land, (2) evaluating the data obtained under the exploratory program to determine the fair market value of the mineral rights to be conveyed, and (3) preparing and issuing the instrument of conveyance.

Sec. 5. Moneys paid to the Secretary for administrative costs shall be paid to the agency which rendered the service, and deposited to the appropriation then current. Moneys paid for the minerals or mineral interests conveyed shall be deposited into the general fund of the Treasury as miscellaneous receipts.

The amendment was agreed to. The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PROTECTION OF PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 701, S. 1688.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1688) to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. ERVIN. Mr. President, this bill, or rather bills in the form of the present bill, have passed the Senate on five separate occasions in the 90th, 91st, and 92d Congresses.

This bill is cosponsored by more than 40 Senators, of all political philosophies, on both sides of the aisle. The bill passed

only four dissenting votes. On all other occasions the bill has passed unanimously.

It is a bill of major importance designed to protect the rights of privacy and other fundamental rights of Federal employees. I would like to pay tribute to many Senators for their part in the formulation of this bill over the years, and particularly to the distinguished senior Senator from Nebraska (Mr. HAWKES).

The bill, as I say, is of extreme importance. The development of the bill and the reasons for it are matters set forth in the report of the committee. In view of the importance of the measure, I ask unanimous consent that the committee report (No. 93-724) be printed in full in the Record at this point.

There being no objection, the report was ordered to be printed in the Record, as follows:

PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

The Subcommittee on Constitutional Rights to which was referred the bill S. 1688 to protect civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy, having considered the same, reports favorably thereon without amendments and recommends that the bill do pass.

S. 1688 is identical to S. 1436 as unanimously reported by the committee and unanimously approved by the Senate in the last Congress. The report on S. 1436 is therefore reprinted below as approved by the committee.

PURPOSE

The purpose of the bill is to prohibit indiscriminate executive branch requirements that employees and, in certain instances, applicants for Government employment disclose their race, religion, or national origin; attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings. The bill would make it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest. It would provide a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings. It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

STATEMENT

The subcommittee has found a threefold need for this legislation. The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those who work for government now and those who will work for it in the future. The bill, therefore, not only remedies problems of today but looks to the future, in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government.

5 years, one for 3 years, and one for 1 year from the date of enactment; any member appointed to fill a vacancy in one of these terms shall be appointed for the remainder of the term. Thereafter, each member shall be appointed for 5 years.

Section 5(c) establishes the compensation for Board members at \$75 for each day spent working in the work of the Board, plus actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence.

Section 5(d) provides that two members of the Board shall constitute a quorum for the transaction of business.

Section 5(e) provides that the Board may appoint and fix the compensation of necessary employees, and make such expenditures necessary to carry out the functions of the Board.

Section 5(f) authorizes the Board to make necessary rules and regulations to carry out its functions.

Section 5(g) provides that the Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this act, and to conduct a hearing on each such complaint. Moreover, within 10 days after the receipt of such a complaint, the Board must furnish notice of time, place, and nature of the hearing to all interested parties, and within 30 days after concluding the hearing, it must render its final decision regarding any complaint.

Section 5(h) provides that officers or representatives of any employee organization in any degree concerned with employment of the category in which the violation or threat occurs, shall be given an opportunity to participate in the hearing through submission of written data, views, or arguments. In the discretion of the Board they are to be afforded an opportunity for oral presentation. This section further provides that Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or loss in leave or pay. They shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such proceedings shall be held to be Federal employment for all purposes.

Section 5(i) applies to the Board hearings the provisions of the Administrative Procedure Act relating to notice and conduct of hearings insofar as consistent with the purpose of this section.

Section 5(j) requires the Board, if it determines after a hearing that this act has not been violated, to state such determination and notify all interested parties of the findings. This determination shall constitute a final decision of the Board for purposes of judicial review.

Section 5(k) specifies the action to be taken by the Board if, after a hearing, it determines that any violation of this act has been committed or threatened. In such case, the Board shall immediately issue and cause to be served on the offending officer or employee an order requiring him to cease and desist from the unlawful practice or act. The Board is to endeavor to eliminate the unlawful act or practice by informal methods of conference, conciliation, and persuasion.

Within its discretion, the Board may, in the case of a first offense, issue an official reprimand against the offending officer or employee, or order the employee suspended from his position without pay for a period not exceeding 15 days. In the case of a second or subsequent offense, the Board may order, without pay for a period not exceeding 30 days, or may order his removal from office,

Officers appointed by the President, by and with the advice and consent of the Senate, are specifically excluded from the application of these disciplinary measures; but the section provides that, in the case of a violation of this act by such individuals, the Board may transmit a report concerning such violation to the President and the Congress.

Section 5(l) provides for Board action when any officer of the Armed Forces of the United States or any person acting under his authority violates the act. In such event, the Board shall (1) submit a report to the President, the Congress, and to the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice through informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. When this determination and report is received, the person designated shall immediately dispose of the matter under the provisions of chapter 47 of title 10 of the United States Code.

Section 5(m) provides that when any party disagrees with an order or final determination of the Board, he may institute a civil action for judicial review in the Federal district court for the district wherein the violation or threatened violation occurred, or in the District Court for the District of Columbia.

The court has jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board, or (2) require the Board to make any determination or order which it is authorized to make under section 5(k) but which it has refused to make. In considering the record as a whole, the court is to set aside any finding, conclusion, determination, or order of the Board unsupported by substantial evidence.

The type of review envisioned here is similar to that obtained under the Administrative Procedure Act in such cases but this section affords a somewhat enlarged scope for consideration of the case than is now generally accorded on appeal of employee cases. The court here has more discretion for action on its own initiative. To the extent that they are consistent with this section, the provisions for judicial review in title 5 of the United States Code would apply.

Section 5(n) provides for congressional review by directing the Board to submit to the Senate and to the House of Representatives an annual report which must include a statement concerning the nature of all complaints filed with it, the determinations and orders resulting from hearings, and the names of all officers or employees against whom any penalties have been imposed under this section.

Section 5(o) provides an appropriation of \$100,000 for the Board on Employee Rights.

SECTION 6

Section 6 provides that nothing in the act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency, under specific conditions, from requesting an applicant or employee to submit a personal financial statement of the type defined in subsection 1 (i) and (j) or to take any polygraph or psychological test designed to elicit the personal information protected under subsection 1 (e) or 1 (f).

In these agencies, such information may be acquired from the employee or applicant by such methods only if the Director of the agency or his designee makes a personal finding with regard to each individual that such test or information is required to protect the national security.

SECTION 7

Section 7 requires, in effect, that an employee or applicant who has been found by the National Security Agency or the Central Intelligence Agency to have committed a violation of the act exhaust their administrative remedies before invoking

the provisions of section 4 (the Board on Employee Rights) or section 5 (the Federal court action). An employee, his representative, or any organization acting in his behalf, must first submit a written complaint to the agency and afford it 120 days to prevent the threatened violation or to redress the actual violation. A proviso states that nothing in the act affects any existing legal authority of the Central Intelligence Agency under 50 U.S.C. 403(c) or of the National Security Agency under 50 U.S.C. 833 to terminate employment.

SECTION 8

Section 8 provides that nothing in the act shall be construed to affect in any way authority of the directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or Executive order. In cases involving his employees, the personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order is to be conclusive and no such information shall be admissible in evidence in any civil action under section 4 or in any proceeding or civil action under section 5. Nor may such information be receivable in the record of any interrogation of an employee under section 1(k).

SECTION 9

Section 9 provides that the Federal Bureau of Investigation shall be excluded from the provisions of this act.

SECTION 10

Section 10 provides that nothing contained in sections 4 or 5 shall be construed to prevent the establishment of department and agency grievance procedures to enforce this act. This section makes it clear that the existence of such procedures are not to preclude any applicant or employee from pursuing any other available remedies. However, if under the procedures established by an agency, the complainant has obtained complete protection against threatened violations, or complete redress for violations, such relief may be pleaded in bar in the U.S. district court or in proceedings before the Board on Employees' Rights.

Furthermore, an employee may not seek his remedy through both the Board and the court. If he elects to pursue his remedies through the Board under section 5, for instance, he waives his right under section 4 to take his case directly to the district court.

SECTION 11

Section 11 is the standard severability clause.

Mr. HRUSKA. Mr. President, I am pleased today to join my distinguished colleague from North Carolina, Senator ERVIN, in support of S. 1633, which seeks to protect certain constitutional rights of employees of the executive branch of Government.

This measure has come before the Senate on several previous occasions and has received unanimous approval each time as I recall; but has subsequently failed to receive similar approval in the House.

The thrust of the bill is to prohibit the Federal Government from requiring employees of the executive branch and applicants for other Government positions to disclose their race, religion, or national origin. The measure also prohibits questions about the activities of employees after duty hours and in activities unrelated to their work or about their personal views or preferences. In addition, it makes illegal the requirement for the

March 7, 1974

CONGRESSIONAL RECORD — SENATE

filing of a personal financial statement unless a conflict-of-interest question is raised.

Some of the major objections to previous measures on this subject have been overcome in the instant bill. The Federal Bureau of Investigation, Central Intelligence Agency, and National Security Agency are exempt completely from the provisions of S. 1688. Moreover, the bill now provides for the right to have counsel present during certain proceedings, and for access to the courts for judicial remedy where complaints may arise.

It is fitting that S. 1688 come before the Senate for consideration at this time. This measure coincides with the President's recent announcement on the establishment of a Cabinet-level Commission on Privacy. The purpose of the Commission is to institute positive efforts by the Federal Government to protect the fundamental rights of privacy for all citizens. S. 1688 is one segment of that effort as it provides the Congress an opportunity to express its collective will in an area of concern to all Americans.

I urge my colleagues in the Senate, and in the other body, to act in an expeditious manner on this measure so that it may be placed before the President for his approval in the near future. This legislation is overdue, as a recognition of the President's proposal for a Commission on Privacy indicates. Therefore, it is now within the grasp of the Congress to recognize the need for the protection of the rights of privacy for executive branch employees and take appropriate action to achieve that end.

MR. ERVIN. I am deeply grateful to the Senator from Nebraska, not only for his remarks on this occasion but for his assistance throughout the years in perfecting this measure. I think the bill in its present form protects the right to privacy of Federal employees without doing any substantial injury to the necessary processes of government.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1688) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1688

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory requirement for the retention of his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry con-

cerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of

sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a financial interest in respect to the performance of his official duties to which he is or may be assigned.

(k) To require or request, or to attempt to

require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice. If he so requests: *Provided, however, That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.*

(1) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

Sec. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however, That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness; Provided further, however, That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties; Provided, further, however, That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.*

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, to take any psychological test designed to elicit from

him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

Sec. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

Sec. 4. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States Government serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

Sec. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of five members, one of whom shall be the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more

than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (3) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of \$75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation of this Act, and

March 7, 1974

CONGRESSIONAL RECORD — SENATE

S. 1687

to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(1) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of \$100,000, to carry out the provisions of this section.

Sec. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting polygraph test, or to take a polygraph test, designed to elicit from him information concerning his personal relationship with

any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

Sec. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however*, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

Sec. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

Sec. 10. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however*, That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further*, That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

Sec. 11. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of the Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Mr. ERVIN. Mr. President, I ask unanimous consent that the text of the bill and a statement prepared by me with respect to the bill be printed in the Record at this point.

There being no objection, the bill and the statement were ordered to be printed in the Record, as follows:

Mr. ERVIN. Mr. President, over the past few years, I have taken an increasing interest in the privacy of Federal employees is respected and protected. My colleagues here in the Senate

have been unstinting in their support of my efforts. They have repeatedly approved, usually by unanimous votes, the Federal Employee Privacy Bill—also known as the "Federal Employees Bill of Rights"—which was again passed by the Senate this afternoon as S. 1687.

I am gratified by the Senate's renewed unanimous approval of these privacy-protective measures. It is now up to the House of Representatives to vote on this legislation which heretofore has languished and died in the House Post Office and Civil Service Committee. This year I understand that, through the good efforts of Representative Walde and his colleagues on the House Retirement and Employee Benefits Subcommittee, who have recently held hearings on this legislation, there is a good chance that the Federal Employee Privacy Bill will at last be reported out for a vote on the House floor. I urge my friends in the House of Representatives to consider favorably this Federal employee privacy legislation, which the Senate has so often approved in the past.

I have been impressed in recent days by the broad bipartisan support for seeking ways to assure individual Americans of their right to privacy. Everywhere I turn these days I am pleased to see new evidence of this bipartisan determination to protect individual privacy from unwarranted governmental interference. Forty-four Senators, on both sides of the aisle, have joined me in cosponsoring S. 1688, the Federal Employee Privacy Bill.

On another front in the fight to protect individual privacy, Senators of both political parties, as well as the Justice Department, are currently cooperating in drawing up legislation designed to protect the privacy of individuals who may be the subjects of criminal justice information systems. As Chairman of the Constitutional Rights Subcommittee, I am in the process of chairing hearings regarding this important privacy legislation. I am particularly impressed by the broad areas of agreement among virtually all interested parties that more effective constraints on the unwarranted collection, storage and dissemination of criminal justice information are needed now.

Moreover, the President's recent Address on Privacy underscores the Administration's commitment to the protection of individual privacy as "the most basic of all individual rights." The President concluded his address with a statement in which I emphatically concur:

"In the first half of this century, Mr. Justice Brandeis called privacy the 'right most valued by civilized men.' In the last half of this century, we must also make it the right that is most protected."

I look forward to the "direct enforceable measures" which the President has promised as the fruits of this concern about individual privacy.

The passage of the Federal Employee Privacy Bill by the Senate today is further evidence of this broad bipartisan support for the protection of individual privacy. I urge both Democratic and Republican Members of the House of Representatives, as well as the President to join the Senate in taking positive privacy protective action by seeing that this legislation designed to protect the privacy of government servants becomes law.

The need for this legislation is greater now than ever before. The report on the Federal Employee Privacy Bill (S. 1688), which I filed earlier this week, outlines in great detail the kinds of abuses and invasions of privacy which the Federal employee privacy legislation is designed to prevent. Let me take just a moment now to share with you some of the additional threats to individual privacy which Federal employees have brought to my attention.

One instance involves some constituents of mine down in Durham, North Carolina.

March 7, 1974

They are data processing, administrative and clerical personnel (GS-4 through GS-13) who work for the Environmental Protection Agency in the Data Systems and Procurement Management Divisions. Early this year twenty or more of these folks received a notice that "your position has been identified as one requiring a post-appointment full field investigation." They were instructed to complete, in duplicate, Form 36, "Security Investigation Data for Sensitive Position," as well as Form 87, the FBI fingerprint form.

Now, as Mr. Huston Blair of Durham, North Carolina, who informed me of this matter, pointed out, none of these twenty data processing, administrative and clerical workers were in any way involved in matters affecting the national security. Nor did they hold positions classified as sensitive. It sounded to Huston Blair, and it sounds to me, like unnecessary government snooping into the private lives of its employees.

I asked the Environmental Protection Agency to look into the matter and explain to me why these twenty civil servants down in North Carolina should be required to provide, on pain of criminal penalties, personal information about themselves, members of their families (living and dead) and their associations, so that their "character and honesty" can be evaluated. The Environmental Protection Agency replied that these so-called "security investigations" of people in non-sensitive clerical and administrative positions were standard operating procedures "consistent with policies of other regulatory agencies."

In addition, within the past few days I learned about some secret files kept by all supervisors of Air Force civilian employees. The Air Force Regulation under which the files were established describes them as containing "a record of the employee's conduct, performance evaluations, reprimands, commendations, debts, and complaints that may be necessary and useful in making and supporting decisions of work assignments." This regulation further provides that "an employee has no right to see" his record. On the other hand, his record must be available "for easy review by CPO [Central Personnel Office] representatives, higher level supervisors, and others authorized to make such a review." An Air Force civilian employee has described to me some of his difficulties in trying to find out about what he describes as "derogatory and libelous information about me, my personal life and medical history," which has been made a part of this secret file.

I have also been reading recently about revised instructions for preparing and submitting "Minority Group Designator data," as well as revisions of Agency Personnel Management Evaluation Systems which are to include various reports, evaluations and "personnel questionnaire surveys." Now, I do not yet know precisely what all these plans and changes mean for the privacy of federal employees. But these changes do demonstrate the fact that without the enactment of federal employee privacy legislation, the possibilities for increasing intrusions into the private lives of federal employees are unlimited.

In speaking about "government bureaucracies [which] seem to thrive on collecting additional information," President Nixon called, in his Address on Privacy, for "reasonable limits on what is collected and how it is used." I submit that Presidential support for the Federal Employee Privacy Bill, which has just passed the Senate, is perhaps the most appropriate way I can think of for instituting these reasonable limits on governmental intrusion into people's private lives.

It is in my opinion, where privacy begins, too. I hope that the President will see fit to begin to promulgate privacy protective measures

right here in the Executive Branch, with statutory protections for the privacy of his own people, the millions of federal employees whose privacy is invaded perhaps more ruthlessly than any other Americans.

ORDER OF BUSINESS

MR. ROBERT C. BYRD. Mr. President, what is the pending matter before the Senate?

THE PRESIDING OFFICER. There is no matter pending before the Senate at this point.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

MR. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 669, S. 3036, so that it may become the pending business, and that no time be consumed on the bill today.

THE PRESIDING OFFICER. The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (S. 3036) to consolidate, simplify, and improve laws relative to housing and housing assistance, to provide Federal assistance in support of community development activities, and for other purposes.

THE PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

MR. ROBERT C. BYRD. Mr. President, under the agreement previously entered into, I ask the Chair whether the amendments to be offered by the Senator from New York (Mr. JAVITS), which are specified in the agreement, would be in order regardless of their germaneness.

THE PRESIDING OFFICER. Under the precedents of the Senate, named amendments under a unanimous-consent agreement would not have to be germane.

MR. ROBERT C. BYRD. I thank the Chair. That was my intention in propounding the request.

So that there will be no question about it, I ask unanimous consent that those amendments by Mr. JAVITS be in order, regardless of their germaneness.

THE PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

MR. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10:30 a.m. tomorrow.

THE PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORITY FOR STAFF MEMBERS TO RECEIVE BILLS, RESOLUTIONS, AND AMENDMENTS AT THE DESK WHEN SIGNED AND PRESENTED BY A SENATOR DURING THE REMAINDER OF THIS CONGRESS

I ask unanimous consent that during the remainder of this Congress it be in order for the proper members of the staff to

receive bills, resolutions, and amendments at the desk when signed and presented by a Senator at any time during the day of a session of the Senate when no question is raised thereon, and that in accordance with the rules, in order to refer them to the appropriate committee or to refer them to the committee or order them printed and to be on the table, as requested by the said Senator.

MAY I say to the Senator from Texas that this request has been cleared earlier today with the leadership on his side of the aisle.

THE PRESIDING OFFICER. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

MR. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there not be a period for the transaction of routine morning business, with statements therein limited to 5 minutes.

THE PRESIDING OFFICER. Without objection, it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

THE ACTING PRESIDENT pro Tempore (MR. BARTLETT) laid before the Senate the following letters, which were referred as indicated:

REPORT OF DEPARTMENT OF NAVY

A letter from the Secretary of the Navy transmitting a report of the facts concerning action pertaining to the West Line Systems Analysis and Evaluation Group, Corona, California (with an accompanying report). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION OF SMALL BUSINESS ADMINISTRATION

A letter from the Administrator, United States Small Business Administration, transmitting a draft of proposed legislation to clarify the authority of the Small Business Administration, and for other purposes (with an accompanying paper). Referred to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION BY FEDERAL ENERGY OFFICE

A letter from the Administrator, Federal Energy Office, transmitting a draft of proposed legislation to provide for the labeling of major appliances, and for other purposes to promote and effect energy conservation, and for other purposes (with an accompanying paper). Referred to the Committee on Commerce.

REPORT OF HIGHWAY TRUST FUND

A letter from the Fiscal Assistant Secretary of the Treasury, transmitting, pursuant to law, the eighteenth annual report on the financial condition and results of the operations of the Highway Trust Fund ended June 30, 1973 (with an accompanying report). Referred to the Committee on Finance.

REPORT OF OVERSEAS PRIVATE INVESTMENT CORPORATION

A letter from the President, Overseas Private Investment Company, transmitting, pursuant to law, a report on "Possibilities of Transferring OPIC Programs to the Private Sector" (with an accompanying report). Referred to the Committee on Foreign Relations.

PROPOSED LEGISLATION BY DEPARTMENT OF STATE

A letter from the Acting Secretary of State transmitting a report on "Possibilities of Transferring OPIC Programs to the Private Sector" (with an accompanying report). Referred to the Committee on Foreign Relations.